

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: D. Schneidewend et al.

Examiner: Jason P. Salce

Serial No: 09/190,309

Group Art Unit: 2421

Filed: November 12, 1998

Docket: RCA89041

For: A SYSTEM FOR PROCESSING PROGRAMS AND SYSTEM TIMING
INFORMATION DERIVED FROM MULTIPLE BROADCAST SOURCES

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Hon. Commissioner for Patents
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REPLY BRIEF

Applicants provide this Reply Brief to the Examiner's Answer dated June 22, 2010.

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1. Status of Claims

Claims 1–19 are pending. Claims 1–19 stand rejected and are under appeal.

2. Grounds of Rejection to be Reviewed on Appeal

Claims 1–2, 4–6, 10–11, and 13–17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,479,268 to Young et al. (hereinafter “Young”).

Claims 1 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,208,799 to Marsh et al. (hereinafter “Marsh”) in view of U.S. Patent No. 5,801,787 to Schein et al. (hereinafter “Schein”).

Claims 3 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of U.S. Patent No. 5,619,274 to Roop et al. (hereinafter “Roop”).

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Program and System Information Protocol for Terrestrial Broadcast and Cable (hereinafter “ATSC”) and further in view of U.S. Patent No. 5,561,461 to Landis et al. (hereinafter “Landis”).

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of ATSC.

Claims 8–9 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of U.S. Patent No. 5,808,694 to Usui et al. (hereinafter “Usui”).

The preceding rejections under 35 U.S.C. §§ 102(b) and 103(a) are presented for review in this Appeal with respect to Claims 1–19. It should be noted that, in addition to the patentable subject matter that they inherit from the independent claims, Claims 3 and 18 include additional patentable subject matter that is argued separately.

Regarding the grouping of the claims with respect to the rejection under 35 U.S.C. § 102(b) of Claims 1–2, 4–6, 10–11, and 13–17, Claims 2, 4–6, 10–11, and 13–15 stand or fall

with Claim 1 due to their respective dependencies therefrom. Claim 17 stands or falls with claim 16 due to its dependency therefrom. With respect to the rejections under 35 U.S.C. § 103(a) of Claims 3, 7–9, 12, and 18–19, Claims 7–9, and 12 stand or fall with Claim 1 due to their respective dependencies therefrom, because the additional art does not cure the deficiencies that will be discussed below. Similarly, Claim 19 stands or falls with Claim 16 due to its dependency therefrom because the additional art does not cure the deficiencies that will be discussed below.

Because claims 3 and 18 include separately patentable subject matter, they stand with claims 1 and 16 respectively (that is, they are patentable if claims 1 and 16, respectively, are patentable). However, claims 3 and 18 also stand or fall alone with respect to the additional patentable subject matter that they recite.

Applicants specifically respond to the Examiner's arguments as they apply to parts B–D. Applicants rely on these arguments and the arguments of the Appeal Brief to summarily address parts E–G.

3. Argument

A. Introduction

The Examiner's Answering Brief responds to Applicants' arguments and does not introduce new rejections. Because Applicants believe that the Examiner has mischaracterized the art at issue as well as the features recited in the present claims, Applicants provide the following arguments in Reply. Applicants reaffirm all of the arguments set forth in the Appeal Brief and maintain that Claims 1–19 are patentably novel and non-obvious over the cited art.

B. Claims 1–2, 4–6, 10–11, and 13–17 are Not Anticipated by U.S. Patent No. 5,479,268 to Young et al.

As pointed out in the Appeal Brief, Claim 1 recites, *inter alia*:

synchronizing the current time of day of the second scheduling clock with the current time of day of the clock of the second corresponding program source based on the second current time reference information prior to initiation of the second program processing function

Similarly, Claim 16 recites, *inter alia*:

synchronizing the current time of day of the second scheduling clock with the current time of day of the clock of the second program source based on the second current time reference information prior to initiation of the second program processing function

The Examiner responds in various ways to the Applicants' arguments. Applicants' arguments include: (1) that Young does not teach or suggest synchronizing the time of a second clock with the time of a program source clock and (2) that Young further fails to teach or suggest such a synchronization prior to initiating a program processing function.

In summary, the Examiner provides unreasonable constructions for the term “clock” and for the term “synchronize”. These are addressed below.

Claim 1 synchronizes two clocks. Claim 1 recites (underlining added for emphasis) “synchronizing the current time of day of the second scheduling clock with the current time of day of the clock of the second corresponding program source”. The current time of day of these two clocks are running values, and synchronizing the times of the two clocks is the same as synchronizing the two clocks. This does not appear to be in dispute.

The Examiner asserts, on page 7 of the Answer, that Young teaches the claimed synchronization in column 13, lines 17–22. In doing so, the Examiner identifies the recited “current time of day of the clock of the second corresponding program source” (claim 1) with Young’s schedule time. When a user in Young requests an operation at a particular time, the user sets a schedule time so that Young’s system can subsequently trigger the operation at that time. The schedule time may be, for example, the advertised start time of a TV program, and the user may pull the schedule time from a program guide, for example. This is a single value of time, and is entered in advance of the program start time. It is not a running value, and it is not a time from a running clock. It is a static value, from (for example) a program guide. Accordingly, the schedule time that the user enters is not a “current time of day of the clock” (claim 1).

Furthermore, Young’s schedule time does not correspond to the time “of the second corresponding program source” (claim 1). Rather than representing a time reference from a specific source of content, Young’s schedule time that is entered by the user has no relationship whatsoever to any particular time reference or source, much less the “program source” (for

example, the broadcast source of the TV program). Additionally, the scheduled time is not selected or entered by the user “based on the second current time reference” because no current time reference is needed for the user to set a schedule time. Therefore, Young fails to teach synchronizing with “the current time of day of the clock of the second corresponding program source based on the second current time reference.”

The Examiner continues to argue on page 18–19 of the Answer that Young’s comparison between a clock and the schedule time (a single value) is equivalent, in some fashion, to synchronizing two clocks. The Examiner also cites Marsh (USPN 6,208,799), which shows yet another comparison function.

The Examiner seems to be implicitly construing “synchronize” as “match for one instant of time”. The Examiner notes that Young waits until a system clock matches a schedule time. The Examiner then declares that the two are at that time synchronized. *See, e.g.*, Examiner’s Answer at page 6. By this logic (the logic of the Examiner’s Answer), a dead analog watch that is no longer keeping time would be synchronized with a working watch simply because the time on the two watches will match twice a day. Indeed, by this logic, a dead analog watch will be synchronized with every single running watch in the world twice a day! This is not an accurate definition or construction of “synchronize”.

Moreover, the Examiner’s implicit construction of “synchronize” as “match for one instant of time” is not a *reasonable construction* of the term “synchronize”. The Examiner is charged with using the broadest reasonable construction, but any such construction must be *reasonable*. In addition to providing for the untenable result that a dead watch is synchronized with every live watch in the world twice a day, the Examiner’s implicit construction also

disagrees with a standard definition of the term “synchronize”, as provided, for example, by Webster’s New Universal Dictionary.

Applicants cite again the definition of “synchronize,” taken from Webster’s New Universal Dictionary, with its accompanying example:

synchronize—*v.t.* **1.** to cause to indicate the same time, as one timepiece with another: *Synchronize your watches.*

The Examiner appears to question what “to cause to indicate the same time” means. However, the above definition actually provides its own example to explain what it means. The definition itself elaborates by saying “as one timepiece with another”. This elaboration explains and limits the definition. First, it is implicit in the elaboration that there are two time pieces. Second, it is implicit in the elaboration that these two time pieces are actually working, and that one of them is not dead (static).

In case there were any remaining doubt about what “synchronize” means, the definition itself further elaborates by including the commonly-recognized phrase of “synchronize your watches”. As above, in this phrase, it is implicit that there are two watches and that both of these watches are working, and not dead.

Based upon this definition from Webster’s, it is unreasonable to construe “synchronize” in such a way that a dead watch must be considered to be synchronized, twice a day, with every live watch in the world. Accordingly, the Examiner’s implicit construction of “synchronize” must be rejected.

As explained above, however, the present claims use “synchronize” in accordance with Webster’s definition of “synchronize” and the commonly understood definition of “synchronize”. That is, the present claims synchronize the time of two clocks (two time pieces). Again, claim 1 recites (underlining added for emphasis) “synchronizing the current time of day of the second scheduling clock with the current time of day of the clock of the second corresponding program source”.

For at least the above reasons, Applicants maintain and reaffirm the position that Young fails to disclose or suggest all of the elements of the present claims.

C. Claims 1 and 16 are Not Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,208,799 to Marsh et al. in view of U.S. Patent No. 5,801,787 to Schein et al.

The Examiner’s arguments against Claims 1 and 16 in the context of Marsh and Schein reflect the same reasoning as described in the Appeal Brief and above in part B and suffer from the same deficiencies. Just as Young merely shows a comparison between one clock and a scheduled time, so does Marsh merely discuss a comparison between a present time/date and a recorded time/data in a VCT. *See* Marsh, col. 10, lines 49–51. All of the Applicants’ arguments described above in part B apply with equal force to Marsh and Schein. Applicants therefore maintain and reaffirm the position that Marsh and/or Schein, taken alone or in combination, fail to disclose or suggest all of the elements of the present claims.

D. Claims 3 and 18 are Not Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,479,268 to Young et al. in view of U.S. Patent No. 5,619,274 to Roop et al.

Applicants note that Roop cannot cure the deficiencies of Young discussed in the Appeal Brief and above in part B and so the present claims are patentable for the aforementioned reasons. However, Applicants further pointed out in the appeal brief that Claim 3 recites:

the system further comprises a filter for filtering the output to inhibit a discontinuous change in the current time reference information from causing a discontinuous change in the display of the current time-of-day, and for providing the filtered output to the display.

Similarly Claim 18 recites:

filtering the first current time reference information and the second current time reference information to smooth a discontinuous change between the first and second current time reference information.

The Examiner has argued and maintains in the Answering Brief that, “[I]f daylight savings is not compensated for while broadcasting stations have compensated for daylight savings time, a time discontinuity is introduced.” The Examiner seems to have taken the position that a difference in the time reference of a program source when compared to a local clock represents the sort of “discontinuous change” recited in the present claims.

However, the Examiner’s interpretation does not seem to have any relationship to the present claim language. The claims describe filtering to prevent a discontinuous change in a time reference. Claim 3 explicitly puts this in the context of preventing discontinuous change *in a display*. Claim 18 describes smoothing a discontinuous change between two time references.

Roop, in contrast, changes a clock by a full hour. As anyone who has observed the changeover at daylight savings time will know, clock displays jump by one full hour at that time. Roop, in other words, *creates* a discontinuous change in the display. When Roop switches clocks, there is no attempt to filter that change. The Examiner has made no effort to show any

way in which Roop inhibits such a discontinuous change, instead stating that a daylight savings adjustment is necessary so that programs will be recorded at the correct time.

Again, Applicants rely on the *plain meaning* of the claim terms. The Examiner has applied an unreasonable interpretation to the present claims in citing Roop. For at least the above reasons it is respectfully asserted that Young and/or Roop, taken alone or in combination, fail to disclose or suggest all of the elements of the present claims.

- E. **Claim 7 is Not Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,479,268 to Young et al. in view of Program and System Information Protocol for Terrestrial Broadcast and Cable and further in view of U.S. Patent No. 5,561,461 to Landis et al.**
- F. **Claim 12 is Not Unpatentable over U.S. Patent No. 5,479,268 to Young et al. in view of Program and System Information Protocol for Terrestrial Broadcast and Cable.**
- G. **Claims 8–9 and 19 are Not Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,479,268 to Young et al. in view of U.S. Patent No. 5,808,694 to Usui et al.**

With respect to parts E–G, Applicants note that the arguments presented above and in corresponding sections of the Appeal Brief adequately address all of the rejections.

H. Conclusion

At least the above-identified elements of the pending claims are not disclosed or suggested by the teachings of the cited references. Accordingly, it is respectfully requested that the Board reverse the rejections of Claims 1–19 under 35 U.S.C. §§ 102(b) and 103(a).

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In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge **Deposit Account No. 07-0832** as required to correct the error.

Respectfully submitted,

Dated: August 16, 2010

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